

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOANNA GARCIA	§	
	§	
v.	§	CIVIL ACTION NO: 2:22-cv-00234
	§	
SAM'S CLUB WEST, INC., SAM'S CLUB	§	
EAST INC., WAL-MART STORES TEXAS,	§	
LLC	§	JURY DEMANDED

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 and 1441 (DIVERSITY)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW SAM'S CLUB WEST, INC., SAM'S CLUB EAST INC., WAL-MART STORES TEXAS, LLC, Defendants in the above entitled and numbered cause, and file this Notice of Removal of the present cause from the 148th Judicial District Court of Nueces County, Texas, in which it is now pending, to the United States District Court for the Southern District of Texas, Corpus Christi Division, showing the Court in support as follows:

1. This lawsuit was commenced in the 148th Judicial District Court of Nueces County, Texas, on August 25, 2022, when Plaintiff's Original Petition was filed in Cause No. 2022DCV-3144-E wherein Plaintiff Joanna Garcia ("Plaintiff") named as Defendants, SAM'S CLUB WEST, INC., SAM'S CLUB EAST INC., WALMART STORES TEXAS, LLC (collectively referred to herein as "Defendants"). A copy of Plaintiff's Original Petition is attached hereto and incorporated herein for all purposes.

2. Defendants were served with a copy of Plaintiff's Original Petition on September 9, 2022. A copy of the Citation indicating date of service is attached hereto and incorporated herein for all purposes.

3. Defendants filed a responsive pleading in State Court on September 30, 2022, a copy of which is attached hereto and incorporated herein for all purposes.

4. Plaintiff filed this civil action against Defendants asserting premises liability and negligence claims allegedly arising from a slip-and-fall accident which occurred on August 6, 2021, while Plaintiff was a patron at Sam's Club located at 4833 South Padre Drive, Corpus Christi, Texas. Pl.'s Orig. Pet. at ¶8. Plaintiff claims in her Original Petition that she slipped and fell "because of liquid detergent on the floor." *Id.*

5. Plaintiff resides in Nueces County, Texas. *Id.* at ¶2. Plaintiff was at the time of the filing of this lawsuit, and remains, a citizen of the State of Texas.

6. Defendant SAM'S WEST, INC. was improperly named in this lawsuit as SAM'S CLUB WEST, INC. Neither SAM'S WEST, INC. nor SAM'S CLUB WEST, INC. own, operate, or control the premises where the incident which forms the basis of this lawsuit occurred. Additionally, SAM'S CLUB WEST, INC is not an existing entity. Therefore, the residence of SAM'S WEST, INC. should be disregarded for purposes of determining diversity.

7. Even though it is an improperly named party, Defendant SAM'S WEST, INC. (incorrectly named herein as SAM'S CLUB WEST, INC.) was, at the time of the filing of Plaintiff's Original Petition, and is at the time of the filing of this Notice of Removal, a corporation organized and existing under the laws of the State of Arkansas with its principal place of business in the State of Arkansas. Defendant SAM'S WEST, INC. is not a citizen of the State of Texas.

8. Defendant SAM'S EAST, INC. is not a citizen of the State of Texas. SAM'S was, at the time of the filing of Plaintiff's Original Petition, and is at the time of the filing of this Notice of Removal, a corporation organized and existing under the laws of the State of Delaware with its principal office and residence in Bentonville, Arkansas.

9. Defendant WAL-MART STORES TEXAS, LLC is not a citizen of the State of Texas. WAL-MART STORES TEXAS, LLC was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a limited liability company existing under the laws of the State of Delaware with its principal office and residence in Bentonville, Arkansas.

10. WAL-MART STORES TEXAS, LLC has one member, Wal-Mart Real Estate Business Trust. Wal-Mart Real Estate Business Trust was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a Delaware Statutory Trust with its principal office and residence in Bentonville, Arkansas. The sole shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co.

11. Wal-Mart Property Co. is not a citizen of the State of Texas. Wal-Mart Property Co. was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a corporation organized and existing under the laws of the State of Delaware with its principal office and residence in Bentonville, Arkansas.

12. Complete diversity of citizenship exists between the adverse parties in the present cause for the purposes of federal removal jurisdiction pursuant to 28 U.S.C. §1441.8

13. Plaintiff's Original Petition states that she seeks monetary relief in the amount of at least \$250,000. Pl.'s Orig. Pet. at ¶33. Therefore, the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

14. This action is one over which this Court has original jurisdiction under the provisions of Title 28, United States Code §§ 1332 and 1441(a) in that it is a civil action between completely diverse parties and that amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

15. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff's Original Petition on Defendants and within one year of the initial filing of the lawsuit.

16. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendant to Plaintiff will be provided as required by law. A copy of this Notice is also being filed with the Clerk of the State Court in which this cause was originally filed.

17. Defendants hereby request a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendants pray for removal of the above entitled and numbered cause from the 148th Judicial District Court of Nueces County, Texas to this Honorable Court.

Respectfully Submitted,

By: /s/ Jaime A. Saenz

Jaime A. Saenz, Attorney-in-Charge
Texas State Bar No. 17514859
Southern District Admissions No. 7630
Email: ja.saenz@rcclaw.com
Elizabeth Ferguson Herrera
Texas State Bar No. 24087716
Southern District Admissions No. 2877535
Email: e.herrera@rcclaw.com
1201 East Van Buren Street
Brownsville, TX 78520
(956) 542-7441
(956) 541-2170 Fax

OF COUNSEL:

COLVIN, SAENZ, RODRIGUEZ & KENNAMER, L.L.P.
1201 East Van Buren
Brownsville, Texas 78522
Telephone: (956) 542-7441
Facsimile: (956) 541-2170

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on this the 7th day of October, 2022 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5.1(d).

/s/ Jaime A. Saenz
JAIME A. SAENZ